

(2013) 12 P&H CK 0185

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1154 of 1985 (O&M)

Bal Mukand Mohinder Kumar Iron Steel Commission Agents
Mandi Gobindgarh

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 175 PLR 107

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The following substantial questions of law arise for consideration in the second appeal:-

- i) Whether the agreement of the creditor Bank with the principal debtor subsequent to the grant of decree providing for making the payment in installment for repaying the loan discharge the liability of the surety?
- ii) Whether the surety is discharged also by the fact that the creditor had given up the security of the principal debtor without the concurrence of the surety?

The defendant, who was the guarantor for the discharge of debt contracted by the co-defendant, is the appellant before this Court. The counsel would raise before me two issues of law, namely, that the Bank had allowed the security availed to them, namely, the goods for factories of the principal debtor to be lost and hence, it resulted in discharge of the surety. The counsel would point out to me that the goods in the godowns had been lifted by some persons and the Bank had not exercised sufficient caution when it was having the keys of the godown and consequently, surety is discharged.

2. The other objection is with reference to an event that had taken place subsequent to the decree which was passed on 31.03.1981 when the principal

debtor undertook with the Bank on 17.01.1987 to pay the money in installments at Rs. 4,500/- per month and that if he committed any default, the Bank would be at liberty to recover the remaining amount. This amounted to compounding with the principal debtor by a creditor that would operate to discharge a surety's liability.

3. Learned counsel would refer me to the judgment of the Supreme Court in *State Bank of Saurashtra Vs. Chitranjan Rangnath Raja and Another*, where the Supreme Court was holding that if the pledged goods had been lost due to the Bank's negligence, surety would be discharged to the extent of such security lost. The counsel would also refer me to a decision of this Court in *State Bank of India Vs. Quality Bread Factory and Others*, where the Court was reiterating the same position that hypothecated goods lost by negligence of the pledgee would discharge the surety. *Union of India (UOI), Ministry of Food and Agriculture (Dept. of Food), New Delhi Vs. Pearl Hosiery Mills and Others*, refers to effect of variation in terms of original contract between the debtor and creditor without the consent of surety as contemplated u/s 133 of the Contract Act and vacate the liability of the surety.

4. In this case, the issue of the effect of the goods under the direct control of the Bank had been considered by a specific issue No. 10. The trial Court held that some of the goods in their godown were reported to have been pilfered, but the Court considered the evidence brought on record that the shortage of material had occurred notwithstanding the fact that the Bank had actually employed a Chowkidar at the premises to safeguard the goods. It appears that there had been also a complaint lodged for the shortfall in the goods at the godown from one N.N. Dwivedi and he had given it in writing that he was responsible for the loss. The witness himself came to Court to say that the writing was under a threat by the Bank that they would otherwise give a complaint to the police against him. The Court on examination of the witnesses had come to a conclusion under issue No. 10 that there had been no negligence on the part of the Bank for any loss of the goods. This finding was again affirmed at the appellate Court. Goods which were lost, which were part of the security only by the negligence of the creditor could discharge a surety but the finding in this case has been that there was no negligence that could be attributed to the Bank for the loss. That ought to conclude the issue of fact in this Court and the plaintiff cannot, therefore, find any justification for placing reliance on judgments which were instances of proven negligence against the creditor Bank to discharge its liability.

5. Even the compounding of the loan by allowing a principal debtor some time to pay in installments ought not to be taken to avail to creditor the benefit of either Section 133 that refers to variance in terms of contract or Section 135 by discharge on the ground of discharge or release of the principal debtor. The provisions contemplate situation of actions prior to suit and cannot include a post decretal situation where the judgment debtor is granted time for making

payment in installments. It cannot amount to compounding of debt as contemplated u/s 135. Nor can this mean a variance of a contract, for, after the decree, what is enforced, is not the contract, but it is the decree that obtains fulfillment through an adjudication and any benefit given to the judgment debtor ought to be taken only as legally permissible so long as such a contract is not against public policy or against terms of any law. I do not find that there is any merit in appeal filed by the defendant. The appeal is vexatious and it is dismissed with costs. Counsel's fee Rs. 10,000/-.